Supreme Court of the United States.

No. 32.—October Term, 1903.

The City of Joplin, Appellant, vs. The Southwest Missouri Light Company. } Appeal from the Circuit Court of the United States for the Western District of Missouri.

[November 16, 1903.]

Bill in equity to restrain the appellant from supplying its inhabitants with incandescent lights or other electric lighting in competition with the appellee.

The city of Joplin is a municipality of the State of Missouri; the appellee is a corporation of said State, and the jurisdiction of the Circuit Court was invoked on the ground that the action of the city impaired the obligation of the contract existing between it and the appellee, in violation of the Constitution of the United States, and hence the appeal directly to this court.

A preliminary injunction was granted. (101 Fed. Rep. 23.) It was made perpetual upon final hearing, and a decree was entered enjoining the city "from supplying or furnishing to the inhabitants, residents or any other person, firm or corporation within said city, or any addition thereto or extension thereof, electric lights, either incandescent or arc, or in any other form or manner, for commercial or private lighting, for and during the full term" of the grant to the predecessors and assignors of appellee, to wit, the term of twenty years from and after October 7, 1891. (113 Fed. Rep. 817.)

A statute of Missouri (Laws 1891, p. 60) authorizes cities to erect, maintain and operate electric light works, to light the streets, and supply the inhabitants with light for their own use, and to establish rates therefor. Or they may, the statute provides, "grant the right to any person or persons or corporation to erect such works . . . upon such terms as may be prescribed by ordinance, provided that such right . . . shall not extend for a longer period than twenty years." Subsequently to and in pursuance of this statute the city by ordinance, October 7, 1891, granted the right to erect and maintain an electric light plant to certain persons, naming them, their successors and assigns, for a period of twenty years. The plant was erected at considerable expense, and has ever since been maintained and operated. The appellee is the successor of the original grantees.

The ordinance conferred rights and exacted obligations, and fixed, besides, the rates to be charged. It also provided for its written acceptance

within ten days after its passage and the commencement of the work within sixty days. It was accepted.

Subsequently, (March, 1899,) the city, acting in pursuance of and in the manner provided in certain ordinances, issued bonds to the amount of $30,000, "for the purpose of erecting an electrical light plant to be owned, controlled and operated by the city," and by the means obtained thereby constructed electrical works, erected poles and wires, established a schedule of rates, and entered into the business of commercial electrical lighting in competition with appellee. The bill alleged that the appellee was the owner of real and personal property within the city, which is assessed by the city for municipal taxation, and that appellee is compelled by reason of such taxation "to aid and assist in operating and maintaining defendant's (the city's) electric plant and business as a rival and competing one" with appellee's electrical plant and business.

Mr. Justice McKenna, after stating the case, delivered the opinion of the Court.

The foundation of the suit is that the ordinances of March, 1899, and the acts and conduct of the city in entering into competition with the complainant (appellee) impairs the obligation of the contract impliedly arising from the ordinance of October 7, 1891, and the acceptance thereof by appellee. In other words, it is contended that under the statute of the State, which we have quoted, the city was given the power to construct an electrical plant and erect poles, &c., to "supply private lights for the use of the inhabitants of the city," or it could grant that right "to any person or persons or corporation" upon such terms as might be prescribed by ordinance. It chose the latter, and granted to the assignors of appellee the right given by the statute and expressed it to be "in consideration of the benefits to be derived therefrom." And it is hence contended that thereby the city contracted not to build works of its own, and that by doing so it violated section 10 of the Constitution of the United States, which provides that no State shall "pass any law impairing the obligation of a contract," and also violated that clause of the Fourteenth Amendment of that instrument, which provides that no State "shall deprive any person of property without due process of law."

It is by implication from the statute and the ordinance passed under it, not from the explicit expression of either, that the conclusion is deduced that the city is precluded from erecting its own lighting plant, and yet it is conceded that the grant to the appellee is not exclusive. That is, it is conceded the city has not exhausted its power under the statute by the grant held by appellee, but may make another to some other person than the appellee. In other words, that the city may make a competitor to appellee, but cannot itself become such competitor. The strength of the

argument urged to support the distinction is in the consideration that competition by the city would be more effective than competition by private persons or corporations—indeed, might be destructive. The city, it is further urged, could be indifferent to profits and could tax its competitor to compensate losses. But this is speculation and it may be opposed by speculation, and there are besides countervailing considerations. The limitation contended for is upon a governmental agency, and restraints upon that must not be readily implied. The appellee concedes, as we have seen, that it has no exclusive right, and yet contends for a limitation upon the city which might give it (the appellee) a practical monopoly. Others may not seek to compete with it, and if the city cannot, the city is left with a useless potentiality while the appellee exercises and enjoys a practically exclusive right. There are presumptions, we repeat, against the granting of exclusive rights and against limitations upon the powers of government.

Many cases illustrate this principle, and some of them were decided in response to contentions similar to those made in the case at bar. In *Skaneatales Water Co.* v. *Skaneatales*, (184 U. S. 354,) the village of Skaneatales, under statutes of the State of New York, granted to the water company the right to construct waterworks, and contracted with it to supply water to the village and its inhabitants for the period of five years. At the expiration of the term of the contract some difference arose about the terms of its continuance, and the village constructed an independent system of waterworks. A suit was brought by the water company to restrain the further construction of the works and their operation, and the company contended that under the statute of the State, by which the village granted to the company its franchises, the village had the election to construct works, or confer such power upon a private company like the water company, and having elected the latter, it impliedly contracted not to construct works of its own. In reply to this contention this court said, by Mr. Justice Peckham:

"There is no implied contract in an ordinary grant of a franchise, such as this, that the grantor will never do any act by which the value of the franchise granted may in the future be reduced. Such a contract would be altogether too far-reaching and important in its possible consequences in the way of limitation of the powers of a municipality, even in matters not immediately connected with water, to be left to implication. We think none such arises from the facts detailed."

It is true there was an element in that case which is not in the case at bar. The village of Skaneatales had entered into a contract with the water company to take water from the company. This contract had expired before the city constructed its works. It was not that contract, however, which was alleged to have been impaired, but that which the water company claimed to have been implied by reason of its organization

and incorporation and in pursuance of the application made to and with the consent of the village authorities. The ultimate reliance, therefore, of the water company was that from the grant to it the village impliedly contracted not to construct works of its own. The similarity of the contention with that in the case at bar is apparent.

In *Bienville Water Supply Company* v. *Mobile*, (175 U. S. 109; 186 U. S. 212,) it was again decided that the granting of franchises to private persons to construct waterworks in a city does not preclude the city from afterwards erecting such works and supplying its inhabitants with water.

Walla Walla v. *Walla Walla Water Co.*, (172 U. S. 1,) is not in opposition to these views. The city of Walla Walla was, by the statute incorporating it, empowered to erect waterworks or to authorize the erection of the same. In pursuance of this power it granted a franchise to the Walla Walla company and contracted to take water from the company, reserving the right to avoid the contract under certain contingencies. But it was provided that: "Until such contract shall have been so avoided, the city of Walla Walla shall not erect, maintain or become interested in any waterworks except the ones herein referred to, save as hereinafter specified." The contract was in force at the time the suit was brought and the water company had substantially complied with all of its terms and conditions. The contract passed upon, therefore, was expressed and explicit. The power to make it was sustained. In the case at bar restraint upon the power of the appellant city is claimed to be implied by the grant to the appellee. We think, for the reasons stated and upon the authorities cited, such restraint cannot be implied.

Decree reversed and case remanded with directions to dismiss the bill.

True copy.

Test:

Clerk Supreme Court, U. S.